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COMMISSION

Office of General Counsel  
Federal Election Commission  
999 E. Street N.W.  
Washington, D.C. 20463

2010 DEC 20 PM 4:09

OFFICE OF GENERAL  
COUNSEL

Re: MUR 6393

Dear Office of General Counsel:

This letter is in response to the complaint filed in the above-referenced matter by the Nebraska Democratic Party. The complaint alleges that eight (8) e-mail communications sent by the Nebraska Republican Party between December 19, 2009 and September 28, 2010, failed to include a required disclaimer for bulk electronic e-mail.

Although neither the complaint nor the letter notifying the Party Treasurer of the complaint identified the provision alleged to have been violated, it is our understanding this matter is governed by 11 C.F.R. 110.11 (Communications; advertising; disclaimers). This regulation provides that section 110.11 "applies only to public communications, defined for this section to include . . . unsolicited electronic mail of more than 500 substantially similar communications . . ." (emphasis added).

Since my initial communication with your Complaints Examination and Legal Administration office, I have made personal inquiry of the Executive Director of the Nebraska Republican Party as to the nature of the e-mail communications in question, and also the nature and source of the recipient list for each e-mail. Listed in the order that the e-mails were attached to the complaint (by date), the first e-mail is an invitation to a rally. The second is an electronic Christmas card/greeting ("Merry Christmas from the Nebraska Republican Party). The third is an invitation to a 2010 Primary Election Night Party. The fourth is a solicitation to join the Nebraska Republican Party Wall of Fame at the party headquarters building. The fifth is an announcement regarding county party conventions. The sixth is an announcement regarding a door-to-door volunteer effort. The seventh is an announcement regarding the opening of a call center. The eighth is a newsletter detailing party activities around the state. In each instance, the e-mails were directed to party officers, central committee members, local party officers, key supporters, regular contributors and party activists and volunteers. All were clearly marked as communications from the Nebraska Republican Party. Most importantly, the e-mails were not an e-blast directed at the general public, or to a voter list, etc. Rather, the e-mails were directed to those who had previously expressed an interest in involvement with the Nebraska Republican Party. Specifically, the e-mails in question were sent to interested persons pursuant to the Party's "opt in" system for e-mail subscribers.

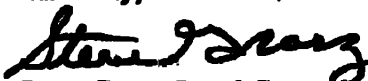
By the plain terms of the applicable regulation, 11 C.F.R. 110.11 applies only to "unsolicited" electronic mail. According to the explanation of 11 C.F.R. Parts 109, 110, 111, and 113 published in the Federal Register on December 13, 2002, a disclaimer is not required on electronic mail where recipients have taken some affirmative step to be on a list used by the sender, as such communications are not unsolicited. Furthermore, while it is conceivable, in theory, that one or more recipients of the e-mails in question could have gotten on the list

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without taking some affirmative step to do so, this would not be the norm under the opt in process used by the Party. As the regulation requires at least 500 similar unsolicited e-mails to be sent before the disclaimer requirement is triggered, it is clear that the eight e-mails in question constitute internal party communications rather than "unsolicited" electronic mail for purposes of 11 C.F.R. 110.11. Consequently, the allegations in the complaint are baseless, and the complaint should be dismissed and the matter closed.

In the event additional information is required regarding any point addressed above, please contact the undersigned.

Sincerely,



Steve Grasz, Legal Counsel  
Nebraska Republican Party

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